

BOARD OF APPEALS CASE NO. 4920

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BEFORE THE

APPLICANT: New Covenant Presbyterian
Church

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ZONING HEARING EXAMINER

REQUEST: Special Exception and
variance to operate a school within the
required setbacks in an R1 District;
128 St. Mary's Church Road, Abingdon

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 5/26/99 & 6/2/99

HEARING DATE: July 7, 1999

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Record: 5/28/99 & 6/4/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant is the New Covenant Presbyterian Church. The Applicant is requesting a Special Exception for a school to be conducted in conjunction with the existing church, a variance from Section 267-36(B), Table IV, to locate the parking lot less than 50 feet from the adjoining residential lot. The Zoning Administrator rendered an interpretation that the proposed school constituted an accessory use to the church. The Applicant, therefore, amended the application by deleting the Special Exception request for the school. Prior to the hearing, the Applicant further amended its request by preparing an amended site plan which did not show a proposed school or expanded sanctuary.

The subject parcel is located at 128 St. Mary's Church Road in the First Election District. The parcel is identified as Parcel No. 381, in Grid 3-E, on Tax Map 56. The parcel contains 5.16 acres, more or less, all of which is zoned R1.

Mr. Matt Hall appeared on behalf of the Applicant's governing body. Mr. Hall said the only request the Applicant was making at this time was for a variance from the 50 foot minimum building use setback for that portion of the existing parking lot which adjoins the McElroy property on the west side of the parcel. Mr. Hall testified that to the best of his knowledge, all required permits were obtained for the building and parking lot when originally constructed. Mr. Hall said that in conjunction with the proposed school, the Applicant learned for the first time that the existing parking lot allegedly did not comply with the 50 foot minimum building or use setback requirements. The witness said as soon as the Applicant learned of the problem, the requested variance was filed to allow the parking lot to remain in its present location.

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Mr. Hall said that denial of the requested variance would result in practical difficulty to the Applicant. He said granting the variance would not cause any harm and that the variance would only affect the McElroy property. Mr. Hall said that the Applicant would be willing to erect screening around the edge of the parking lot where it adjoins the McElroy property to mitigate any adverse impact to the property. Mr. Hall concluded his testimony by saying that the Applicant has never received any complaints from anyone regarding the parking lot.

Ms. Sally McElroy appeared and testified that her property adjoins the subject property to the west. Ms. McElroy testified she was present during and able to hear the testimony of Mr. Hall and was aware of the nature of the Applicant's request. Ms. McElroy testified that she had no objection to the variance being granted as to the location of the parking lot.

Mr. Gerald A. Baxter was accepted as an expert in the field of architecture. Mr. Baxter testified that he was the architect who originally designed the building when it was constructed on the subject property in the late 1980's. Mr. Baxter testified that he specifically recalled that it was his understanding that as long as a 10 foot buffer yard was provided around the parking lot, all Code requirements were met. He indicated that he was not aware that the Department of Planning and Zoning claimed that the 50 foot minimum building use or setback requirement applied to the parking lot until several months ago when the issue was first raised by the Department in a meeting held to discuss possible school construction. Mr. Baxter said that to the best of his knowledge, the construction drawings which he prepared always showed the parking lot in the same location it is in now and that when the building and parking lot were approved, no objection to the location of the parking lot was raised by the Department.

Mr. Baxter went on to explain that although it was possible to relocate the parking lot on the property so that no variance would be required, doing so would definitely be undesirable. He pointed out that doing so would cause more site disturbance and more grading and could possibly increase storm water run-off which would require modifying the storm water management facility. He pointed out that relocating the parking lot would disrupt vehicle circulation in that it would be more difficult to use the porte cochere at the main entrance of the building.

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Mr. Baxter testified that moving the parking lot would make it more difficult for church patrons to enter the building and cause pedestrian conflicts. Given the fact that the parking lot was located closer to the entrance of the building, it provides efficient use of the subject property. He testified that relocating the parking lot would require vehicles and pedestrians to travel further to the building entrance, making a less desirable site plan.

Mr. Denis Canavan appeared and qualified as an expert in the field of land planning. Mr. Canavan said that the subject property was unique or had topographic conditions which surrounding properties does not share, which justify the requested variance. He indicated that the subject property is excess in of 5 acres and is much larger than most of the adjoining properties. He testified that, as Mr. Baxter indicated, the subject property's road frontage was unusual for properties which are used for institutional uses such as a church. He stated that the 20 foot change in grade, the necessity to locate the storm water management facility at the lowest point of the subject property and that the driveway entrance was required to be aligned with Long Meadow Drive all were factors which affected the ability of the Applicant to use the subject property and made it unique. Mr. Canavan said that the Applicant is requesting the minimum relief necessary and in the event that the variance is denied, over 30 parking spaces would have to be relocated, necessitating additional tree removal and site disturbance in terms of grading and for the reasons pointed out by Mr. Baxter. All of which, Mr. Canavan said, would cause practical difficulty on the Applicant.

Mr. Canavan went on to testify that granting the variance would not be substantially detrimental to adjacent properties, would not materially impair the purpose of the Code or public interest. Mr. Canavan further pointed out that granting the variance would have absolutely no impact on anyone other than Ms. McElroy, the confronting property owner to the west who indicated her support for the variance. He stated that the parking lot is permitted and its relationship to the McElroy property could not possibly have any impact on anyone else.

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Several area residents appeared and testified that the Applicant's property is not unique in that the property is approximately 5 acres in size, is basically rectangular in shape, and is essentially flat. The opponents pointed out that if the variance is denied, approximately 36 parking spaces would have to be relocated which would result in a reduction of the development potential for the rest of the Applicant's property.

Several of the protestants who appeared attempted to introduce evidence in opposition to the Applicant's proposed school. The testimony was objected to by the Applicant's attorney and the objection was sustained.

The Staff Report of the Department of Planning and Zoning recommends conditional approval and provides:

"The New Covenant Presbyterian Church has existed since the early 1980's. The existing church building was located on the west side of the parcel, and the parking lot was established along the left side and across the rear of the church. The building has been properly sited according to the Code requirements; however, the parking lot was placed only 10 feet from the west property line. This issue was not discovered until the Applicant requested the interpretation regarding the school. Although there are adjoining residential uses, there is approximately 140 feet between the nearest dwelling to the east and the proposed parking lot, and approximately 250 feet between the existing parking lot and the dwelling to the west. The area between the parking lots and the residential use is wooded. As long as the existing vegetation is maintained and lighting used around the parking lot is directed down and away from the adjacent residences, the requested variance should not create any adverse impacts."

CONCLUSION:

The Applicant filed a request for a Special Exception to operate a school in conjunction with the existing church and an area variance to Section 267-36(B), Table IV, of the Harford County Code, for an existing parking lot located 10 feet from the property line in an Urban Residential District. The Zoning Administrator subsequently rendered an interpretation that the proposed school constituted an accessory use to the church and the Applicant amended the application by deleting the Special Exception request for the school. Therefore, the only matter before the Hearing Examiner was the reduction of the required setback of 50 feet to 10 feet for the parking lot.

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The questions raised are:

1. Do the protestants have standing to participate in the instant case?
2. Did the Applicant meet the required burden of proof to justify the requested variance?

A person aggrieved by a decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally.

The only property owner who could possibly be impacted by the requested variance is Ms. McElroy, who testified she has absolutely no objection to the variance. Some of the protestants attempted to turn the case into one regarding the requested school or other potential future use of the property. Only one of the protestants, Mr. Webb, presented any testimony whatsoever that indicated that the existing parking lot impacts his property. Mr. Webb's testimony could be considered relevant. However, he candidly admitted that he had no idea why water was running into the street and could not say that it was the location of the parking lot or simply a problem with the existing storm water management facility which should be repaired.

Section 267-11 authorizes the granting of variances, provided that the Board finds:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.

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The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, wherein the Court stated:

"In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

The Court of Appeals of Maryland in McLean v. Soley, 270 Md. 208, held that the following criteria are to be used for determining whether "practical difficulty" has been established:

- 1. Whether strict compliance with the requirements would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.**
- 2. Whether a grant of the variance applied for would do substantial justice to the Applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.**
- 3. Whether relief can be granted in such a manner that the spirit of the ordinance will be observed and public safety and welfare secured.**

The evidence shows that the subject property is larger than adjoining properties, has a 20 foot grade elevation difference, has unusual road frontage and an entrance location fixed by the location of Long Meadow Drive. The testimony of the expert witnesses called by the Applicant found those factors to be unique. Uniqueness does not require a property to be the only property with those characteristics.

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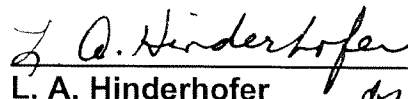
Under McLean v. Soley, denial of the variance would result in practical difficulty to the Applicant. Denial of the variance would unreasonable prevent the use of the subject property for a permitted purpose, i.e., use as a site for a parking lot for a permitted use. The parking lot has existed in the same location for over 10 years without objection, and the setback violation was not discovered until the Applicant sought information pertaining to a proposed school.

Under these circumstances, it is the finding of the Hearing Examiner that the subject property is unique and that denial of the variance would cause practical difficulty to the Applicant. It is, further, the finding of the Hearing Examiner that the variance will not be substantially detrimental to adjacent properties and will not materially impair the purpose of the Code. No evidence was presented that adverse impact would result from granting the setback variance.

Therefore, it is the recommendation of the Hearing Examiner that the requested variance to reduce the setback for the parking lot to 10 feet be approved, subject to the following conditions:

1. The Applicant obtain site plan approval through the Development Advisory Committee for the proposed expansion of the facility. The Applicant shall also submit a landscaping and lighting plan for review and approval.
2. The Applicant obtain all necessary permits and inspections for the proposed construction and development of the site.

Date MARCH 30, 2000



L. A. Hinderhofer
Zoning Hearing Examiner